

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

B-218428

FILE:

DATE: June 11, 1985

Siska Construction Company, Inc.

MATTER OF:**DIGEST:**

1. Bid is nonresponsive and not for consideration where the bidder's corporate surety on bid bond is not listed in Treasury Department Circular 570. Such a deficiency may not be corrected after bid opening.
2. Bid bond is not invalid as a result of alleged absence of corporate seals of bidders and sureties.
3. Protester's new and independent ground of protest is dismissed where the later-raised issue does not independently satisfy rules of GAO's Bid Protest Regulations.

Siska Construction Company, Inc. (Siska), protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. F-27604-85-B0007 issued by Pease Air Force Base, New Hampshire. In addition, Siska also protests the responsiveness of the bid submitted by the second low bidder, Middlesex Contractors & Riggers, Inc. (Middlesex).

Siska's protest is denied in part and dismissed in part.

The solicitation was issued on February 14, 1985, for renovation and improvements of the Alert Crew Facility at Pease AFB, New Hampshire. At bid opening on March 22, 1985, Siska submitted the low bid of \$887,795; the second low bidder, Middlesex, bid \$967,000. Both bids were under the government's cost estimate.

As part of its bid Siska submitted on Standard Form (SF) 24, "Bid Bond," the bid bond which the solicitation indicated was required. During the procuring agency's evaluation of the responsiveness of Siska's bid, it determined that the surety of the required bid bond, United American Insurance Company (United), was not an approved

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surety listed in Treasury Department Circular 570 entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies." Accordingly, on March 28, 1985, the contracting officer determined that Siska's bid was nonresponsive since it did not meet the applicable bid guarantee requirements.

Siska argues that its bid should not have been rejected as nonresponsive because of the use of United as the bid bond surety since there was nothing in the solicitation which either stated that the surety was required to be listed in Treasury Circular 570 or incorporated by reference such a requirement. In addition, Siska points out that the solicitation did not specify the form of the required bid bond. The protester also argues that its bid bond should have been acceptable to the government since it had used United as the surety for its bid bonds submitted in response to prior solicitations without objection and it alleges that United has been accepted as the surety for bid and performance bonds under prior government procurements including one by the Air Force. Siska states that under the circumstances, its bid should be regarded as responsive notwithstanding its use of United as surety for its bid bond. In the alternative, the protester argues that it should be permitted to correct any deficiency in its bid bond as a minor irregularity and it advises that it will substitute an acceptable surety for its bid bond.

The failure to provide a bid guarantee from a surety listed in Treasury Department Circular 570 is not a minor irregularity, but renders a bid nonresponsive. General Communications and Electronics, Inc., B-197471, Aug. 12, 1980, 80-2 C.P.D. ¶ 108. The failure to provide a proper bid guarantee may not be waived or excused except in particular circumstances not applicable here. See Federal Acquisition Regulation (FAR), 48 C.F.R. § 28.101-4 (1984). While the protester cites our decisions Dependable Janitorial Service and Supply, B-190956, Apr. 13, 1978, 78-1 C.P.D. ¶ 283, and Southern Plate Glass Co., B-188872, Aug. 22, 1977, 77-2 C.P.D. ¶ 135, in support of its position that its failure to provide an acceptable surety for its bid bond is correctable as a minor irregularity, the cited decisions are not applicable to this case. The first decision cited by the protester did not involve the acceptability of a bid bond but the bidder's failure to complete certain standard representations and certifications in its bid. In the second decision, we held that a bid bond which

stated that it was in the required 20 percent of the amount bid but did not state a maximum dollar limitation was not defective since the bond clearly was for the required amount and the maximum dollar limitation is not required.

We are not persuaded by Siska's contention that its bid bond should not be regarded as deficient on the basis that the solicitation did not specify the bid bond form and that the solicitation neither advised potential bidders that the corporate surety for the bid bond was required to be listed in Treasury Circular 570 nor incorporated by reference that requirement. Although Siska states that it "elected" to submit its bid bond on the SF 24, "Bid Bond," that form is the specified bid bond form for government procurements in the United States. See FAR, 48 C.F.R. § 28.106-1. As the agency has pointed out in its report, instruction 4(a) on the reverse side of the SF 24 specifically advises that corporations executing the bid bond as sureties must be among those appearing in the Treasury Department's list of approved sureties. This requirement is also set forth at FAR, 48 C.F.R. § 28.202-1. Bidders are also advised in the regulations where they can obtain a copy of Treasury Department Circular 570. See FAR, 48 C.F.R. § 28.202-1(d).

In Alpha Sigma Investment Corp., B-194629.2, May 17, 1979, 79-1 C.P.D. ¶ 360, and S.T.C. Construction Corp., B-194980, July 27, 1979, 79-2 C.P.D. ¶ 60, we held that the failure to provide a bid guarantee from a surety listed in Treasury Department Circular 570 operates to render a bid nonresponsive notwithstanding that the solicitation does not specifically mention the requirement concerning the acceptability of sureties. In these cases, the solicitation contained SF 21, which provided in pertinent part that a failure to provide a bid guarantee "in proper form" or amount may be a basis for bid rejection and we concluded that such instruction notified bidders that not all sureties would be considered adequate. Thus, we held in those decisions that it was incumbent upon the would-be bidder to determine which sureties are acceptable to the government and that the lack of an acceptable surety for the bid bond would render the bid nonresponsive. In view of the far more specific instructions which the SF 24 currently provides potential bidders, we must conclude that Siska had the responsibility to ensure that its surety was acceptable to the government and that its submission of a bid bond with an unacceptable surety rendered its bid nonresponsive. See General Communication & Electronics, Inc., B-197471, supra, 80-2 C.P.D. ¶ 108 at 2.

Regarding Siska's assertion that its bid guarantee is proper since United was apparently accepted without objection as a surety in prior government procurements, the fact that government agencies, including the Air Force, may have previously overlooked a bid bond deficiency involving United as a surety does not provide a basis for accepting the same deficiency under the present procurement. Ron Grove's Heating, Air Conditioning and Piping, Inc., B-198687, May 23, 1980, 80-1 C.P.D. ¶ 360. Moreover, Siska's offer to submit an approved surety at this time may not be accepted because a bidder may not make an otherwise nonresponsive bid responsive after bid opening. Zemark International Construction Co., B-203020, May 12, 1981, 81-1 C.P.D. ¶ 372.

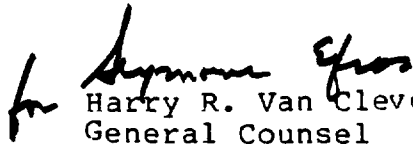
The protester also contends that since its low bid was some \$80,000 lower than the next low bid, it should either be permitted to correct the defect in its bid bond or such bond should be accepted as were prior bonds involving United as surety. The fact that a cost savings would result to the government from accepting the low bid does not provide a proper basis for accepting that bid. We have consistently held that a nonresponsive bid may not be accepted even though it would result in monetary savings since acceptance would be contrary to the public interest in maintaining the integrity of the competitive bidding system. Kaydon Corp., B-214920, July 11, 1984, 84-2 C.P.D. ¶ 41.

The protester also contends that the bid submitted by Middlesex, the second low bidder, as well as the bids submitted by the other bidders, was nonresponsive because the accompanying bid bonds lacked the required corporate seals. Siska points out that instructions on the SF 24 require that the corporate seals of both the surety and the principals should be affixed thereon and the protester asserts that its bid bond was the only one with the required corporate seals. The instructions provide that corporations executing the bond shall affix their corporate seals. Individual sureties are to execute the bond opposite the word "Seal" and, if the bond is executed in Maine or New Hampshire, they shall also affix an adhesive seal. Contrary to Siska's assertion, our review of copies of the bid bonds submitted clearly shows that Middlesex's corporate seal was embossed upon its bid bond and another bidder's bid bond shows the corporate seals of both the bidder and its surety. We note that Middlesex has advised us that its bid bond was affixed with both its corporate

seal and that of its surety. It thus appears that Siska's assertions may pertain to the fact that seals of adhesion may not have been affixed to the bid bonds. However, such seals are only required by the SF 24 for bid bonds executed in New Hampshire or Maine with individual sureties and not corporate sureties. In any event, the failure to affix corporate seals to a bid bond does not render the bid nonresponsive and such seals may be furnished after bid opening. See Siska Construction Company, Inc.--Request for Reconsideration, B-218208.2, Mar. 21, 1985, 64 Comp. Gen. _____, 85-1 C.P.D. ¶ 331.

Lastly, in its April 30, 1985, comments upon the agency's report on its protests, Siska has raised for the first time an additional objection to the validity of the bid bonds submitted by the other bidders: it "contest[s] the fact that the Power of Attorney sheets were signed and sealed in Hartford, Connecticut as indicated." Siska does not explain the factual basis for this contention or how, if true, it would affect the validity of the bid bonds. In any event, the additional basis presented for questioning the validity of the other bidders' bid bonds is untimely. Our Bid Protest Regulations require that a protest be filed within 10 working days after the basis for the protest is known or should have been known. See 4 C.F.R. § 21.2(a)(2) (1985). Where a protester initially files a timely protest and later supplements it with new and independent grounds for protest, the later-raised allegation must independently satisfy these timeliness requirements. Our Regulations do not contemplate the unwarranted piecemeal development of protests. See Baker Company, Inc., B-216220, Mar. 1, 1985, 85-1 C.P.D. ¶ 254. Since the basis for the new grounds for objecting to the other bidders' bid bonds should have been known to the protester the day of bid opening, at which time he viewed the other bid bonds (which resulted in his initial objection concerning the alleged lack of corporate seals), we dismiss the protester's new basis for protest as untimely.

Accordingly, we deny the protest in part and dismiss it in part.


for Harry R. Van Cleve
General Counsel